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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,959	05/24/2000	David I. Durst	TDI-207	6121

7590 08/14/2006

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EXAMINER

ZAND, KAMBIZ

ART UNIT PAPER NUMBER

2132

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/577,959

Applicant(s)

DURST ET AL.

Examiner

Kambiz Zand

Art Unit

2132

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

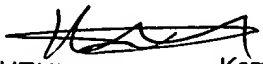
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 53-59.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 53-59.  
Claim(s) rejected: 18-21 and 41-52.  
Claim(s) withdrawn from consideration: 22-28.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
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Art Unit: 2132

Continuation of 11. does NOT place the application in condition for allowance because: Examiner has carefully considered applicant's arguments in the light of the previous arguments presented and further in the light of the claims pending:

- a) the rejection of claims 53-59 have been withdrawn.
- b) the examiner suggestions for the inventive having procedure over the prior art is irrelevant if such procedure is not an essential elements of applicant's invention. If it is, then it is applicant responsibility to amend the claim in a manner that disclose such inventive steps of the invention to differentiate the applicant's claim over the prior art, and if such amendments require further search or consideration, then such requirements would be implemented only if applicant file an RCE.
- c) Examiner have reviewed the record and it is amazing that previous examiner have allowed claims to be entered after final rejection rendered and by restricting the claims (a proper restriction procedure), and therefore NOT expediting the examination process contrary to MPEP guidance.

Former examiner action is a courtesy on the part of the office to continue examination of the claims and re-opening of the prosecution by rendering a non-final action.

d) The examination of the application is closed as of mailing of this advisory. Any further arguments to resolve the issue with the exception of incorporation of the claims 53-59 into independent claims without deletion of any limitation or broadening of the claim language that result in expedite examination of the application, cancellation of all rejected claims 18-21, 41-45, 47-52, including claims 22-28, would not be considered and entered. No new dependent claims that may alter other objected dependent claims would not be entered. Applicant may appeal the case to the board of appeal and interference for further consideration as an option or file an RCE for further consideration.

e) Interview after the mailing of this advisory (final rejection) would not be granted on this case.

f) Applicant's other arguments are not persuasive since the prior art of records and the applicant admittance prior art in the specification do disclose those arguments..



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